

1 **BEFORE THE ARIZONA MEDICAL BOARD**

2 In the Matter of

3 **RICHARD G. BOTTIGLIONE, M.D.,**

4 Holder of License No. 14927  
5 for the Practice of Allopathic Medicine  
6 In the State of Arizona.

Board Case No. MD-11A-14927-MDX

**FINDINGS OF FACT,  
CONCLUSIONS OF LAW AND ORDER**

**(Letter of Reprimand)**

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8 On February 1, 2012, this matter came before the Arizona Medical Board ("Board")  
9 for consideration of the Administrative Law Judge (ALJ) Brian Brendan Tully's proposed  
10 Findings of Fact, Conclusions of Law and Recommended Order. Richard G. Bottiglione,  
11 M.D., ("Respondent") appeared before the Board with legal Counsel Charles E. Buri;  
12 Assistant Attorney General Anne Froedge, represented the State. Christopher Munns  
13 with the Solicitor General's Section of the Attorney General's Office, was available to  
provide independent legal advice to the Board.

14 The Board, having considered the ALJ's decision and the entire record in this  
15 matter, hereby issues the following Findings of Fact, Conclusions of Law and Order.

16 **FINDINGS OF FACT**

- 17 1. The Arizona Medical Board ("Board") is the authority for the regulation and control  
18 of the practice of allopathic medicine in the State of Arizona.
- 19 2. Richard G. Bottiglione, M.D. ("Respondent") is the holder of License No. 14927 for  
the practice of allopathic medicine in Arizona.
- 20 3. Respondent practices dermatology and dermatology surgery. He has been board-  
21 certified in dermatology since 1978.
- 22 4. J.R. moved from South Africa to Arizona in 1998. J.R. was an architect and town  
23 planner in South Africa.
- 24 5. J.R. was first seen by Respondent on March 27, 2003, with keratotic, eczematous  
25 lesions on his left cheek and left leg. J.R. was 69 years old at the time. J.R. was

- 1 diagnosed with squamous cell carcinoma. On April 10, 2003, Respondent  
2 performed Mohs micrographic surgery ("Mohs surgery") to treat J.R.
- 3 6. On October 14, 2010, J.R. presented to Respondent with a lesion on his scalp  
4 measuring 3.5 centimeters. J.R. was 77 years old at the time. Respondent  
5 biopsied the lesion by shaving a portion of the tissue and sent the tissue to an  
6 outside laboratory. The tissue was diagnosed as "moderate to poorly  
7 differentiated squamous cell carcinoma."
- 8 7. A poorly differentiated squamous cell carcinoma is aggressive with a greater  
9 chance of recurrence and metastasis.
- 10 8. Respondent recommended to J.R. that the lesion be excised using Mohs surgery.
- 11 9. Mohs surgery was developed by Frederic E. Mohs, M.D. At the hearing,  
12 Respondent described Mohs surgery as "when the doctor acts as the pathologist  
13 and the surgeon together for the purpose of excising the skin cancer, with the  
14 ideal goal of being able to clear it microscopically whenever possible."
- 15 10. J.R. signed a "Consent to Cancer Surgery" for surgery to be performed by  
16 Respondent on October 28, 2010.
- 17 11. On October 28, 2010, Respondent performed Mohs surgery on J.R.'s lesion.  
18 During stage 1 of the Mohs surgery, the slides of the removed tissue were positive  
19 for squamous cell carcinoma.
- 20 12. After he saw the squamous cell carcinoma in the stage 1 slides, Respondent  
21 informed J.R. that there was still cancer and that Respondent had to perform  
22 another resection.
- 23 13. Respondent continued with the Mohs surgery until hitting bone. Respondent  
24 testified that the stage 2 slides revealed that "half the slides had on level 1 some  
25 squamous cell." The outer edges of the surgical field were all negative.
14. Respondent determined that he could not perform a bone section because it  
requires a very specialized technique that Respondent could not perform.  
Respondent scraped the bone and felt it was clear. Respondent visually observed  
the bone and did not see any pitting. The bone was not soft or brittle. Respondent  
opined that the bone did not have any cancer, and he called it a clear margin.

- 1 15. Respondent decided that he would continue to observe the bone over time.  
2 Respondent's decision was based on several factors. J.R. was 77 years old and  
3 not in good health. Respondent wanted to give J.R. "a chance to recover from this  
4 surgery, because he was pretty worn out." Respondent empathized with J.R.  
5 because at the time, Respondent himself was going through bladder squamous  
6 cell carcinoma and understood the benefits of recovering from surgery.
- 7 16. Respondent explained to J.R. and his wife that Respondent would continue to  
8 watch the bone.
- 9 17. Respondent repaired the wound using a partial construction with a partially closed  
10 flap. Respondent testified that he did not close the entire wound using a flap  
11 because he was only able to "partially close it easily," and he wanted to continue  
12 to observe the area.
- 13 18. J.R. returned to Respondent for post-operative follow-up examinations on October  
14 29, 2010, November 1, 2010, November 2, 2010, and November 4, 2010. J.R.  
15 had no complaints, and the surgical site appeared to be healing.
- 16 19. On November 9, 2010, Respondent removed half of J.R.'s sutures. The remaining  
17 sutures were removed on November 23, 2010.
- 18 20. On December 2, 2010, J.R. complained to Respondent about a problem location  
19 on the dorsum of his nose that had been present for five years. Examination  
20 revealed a crusted 1 cm lesion. A biopsy was performed. The pathologic  
21 diagnosis was squamous cell carcinoma in situ. Respondent later advised J.R. to  
22 return for electrodesiccation of the lesion on his nose.
- 23 21. On January 3, 2011, Respondent saw J.R. and noted that the occiput was healing  
24 as expected.
- 25 22. On January 10, 2011, J.R.'s wife called Respondent to report that J.R. was  
complaining of lymph node swelling and discomfort in his neck. Respondent  
prescribed Ciproflaxin and Prednisone for the condition. Respondent  
recommended that J.R. see his primary care physician.
23. J.R. saw Gerald Asin, M.D., who referred J.R. to Samuel S. Bailey, M.D.

- 1 24. On January 20, 2011, J.R. saw Dr. Bailey. Upon examination, Dr. Bailey  
2 performed a biopsy of a growth at the periphery of Respondent's prior surgical site  
3 and a needle aspiration of the neck lesion. The biopsies revealed squamous cell  
4 carcinoma.
- 5 25. On February 15, 2011, Dr. Bailey took J.R. to surgery at Scottsdale Healthcare  
6 Shea, and he excised the malignancy of the scalp and the deep neck lymph node  
7 in the right occipital neck.
- 8 26. On March 14, 2011, the Board received a written complaint from J.R. and A.R.  
9 against Respondent concerning Respondent's treatment of J.R. for squamous cell  
10 carcinoma. The Board designated the complaint as Case No. MD-11-0390A.
- 11 27. After investigating the complaint, the Board issued a Complaint and Notice of  
12 Hearing ("Complaint") charging Respondent with acts of unprofessional conduct in  
13 his treatment of J.R. The Board referred the matter to the Office of Administrative  
14 Hearings, an independent agency, for an evidentiary hearing.
- 15 28. After receiving the complaint, the Board assigned the matter to its assigned  
16 medical consultant, Scott Dale, M.D., for review. Dr. Dale is a board-certified  
17 dermatologist and certified Mohs surgeon who practices in Flagstaff, Arizona.
- 18 29. On June 1, 2011, Dr. Dale prepared his "Medical Consultant Report and  
19 Summary" in which he opined that Respondent deviated from the standard of care  
20 by "Inadequate performance of procedure." However, Dr. Dale further opined that  
21 no deviation of the standard of care occurred with respect to the allegation of  
22 "Inadequate follow up care following Mohs surgery" by Respondent. At hearing,  
23 Dr. Dale's testimony was consistent with his report.
- 24 30. Paragraph 9 of the Complaint alleges that "[t]he standard of care for Mohs  
25 micrographic surgery requires a physician to surgically remove a skin cancer  
confirmed by microscopic exam of the entire surgical margin of excised tissue to  
ensure the complete removal of the malignant tissue." The Board alleges that  
Respondent violated that standard of care.
31. At hearing, Robert Bloom, M.D., testified for Respondent. Dr. Bloom practices  
dermatology, surgical dermatology, and Mohs surgery.

- 1 32. After completing his residency program, Dr. Bloom completed a one-year  
2 fellowship with Dr. Mohs. In addition, Dr. Bloom was Dr. Mohs' first fellow.
- 3 33. In addition to his experience as a Mohs surgeon, Dr. Bloom has extensive  
4 experience teaching residents performing Mohs surgery and supervising Mohs  
5 surgeons.
- 6 34. Dr. Bloom testified that it is not the standard of care for Mohs micrographic surgery  
7 for a physician to surgically remove a skin cancer confirmed by microscopic exam  
8 of the entire surgical margin of excised tissue to ensure the complete removal of  
9 the malignant tissue. Dr. Bloom explained that there are situations where the  
10 entire tumor cannot be removed. He further explained that there are also  
11 "situations where the frozen sections can have artificial components that render  
12 them not reflective of the defect created."
- 13 35. Dr. Bloom opined that the exercise of clinical judgment is an important part of  
14 Mohs surgery. For example, a Mohs surgeon exercises clinical judgment in  
15 evaluating where to cut and how much to cut.
- 16 36. Dr. Bloom testified that the standard of care does not require a Mohs surgeon to  
17 completely remove all cancer because of the nature of cancer.
- 18 37. Dr. Bloom stated that the standard of care for Mohs surgery allows the surgeon to  
19 visually examine the bone and determine on the basis of his visual examination  
20 whether the bone is cancer-free.
- 21 38. The weight of credible evidence established that Respondent met the standard of  
22 care for a Mohs surgeon when he visually examined J.R.'s bone and exercised his  
23 clinical judgment that the bone was cancer-free.
- 24 39. The Board further alleges that the rapid reoccurrence of squamous cell carcinoma  
25 in J.R.'s scalp likely resulted in Respondent's failure to remove all cancer in the  
prior surgery.
40. Won Kyu Lee, M.D., testified for Respondent. Dr. Lee is board-certified in  
dermatopathology, hematopathology, and cytopathology.
41. Dr. Lee opined that the second tumor on J.R.'s scalp had been "already  
subclinically present beyond the boundaries of the Mohs surgery."

1 42. Dr. Lee was able to correlate the slides taken during J.R.'s surgery and  
2 Respondent's map of those slides.

3 43. Dr. Lee testified that the ulcerated and infiltrating squamous cell carcinoma lesion  
4 removed from J.R. by Respondent had a higher rate of extension or metastasis.  
5 Dr. Lee did not agree that there was metastasis of squamous cell carcinoma to  
6 J.R.'s lymph node based upon the pathology report and the size of the mass,  
7 which was 4 centimeters.

8 44. The weight of credible evidence established that J.R.'s subsequent squamous cell  
9 carcinoma was not a recurrence of the tumor removed by Respondent during the  
10 Mohs surgery.

11 45. Paragraph 12 of the Complaint alleges that Respondent's medical records for J.R.  
12 were inadequate.

13 46. In his October 28, 2010 operative report under "Summary," Respondent wrote "A  
14 tumor-free plane was achieved after 2 stages of Mohs surgery." Respondent  
15 testified that he should have clarified that statement. He stated that he "should  
16 have said that the lateral margins were microscopically and clinically clear."

17 47. Also in the operative report under "Stage 2," Respondent wrote "Microscopic  
18 examination revealed no tumor in the deep and outer borders of these sections."  
19 Respondent admitted that the notation should have been worded better.

20 48. Dr. Lee testified that a subsequent provider reviewing Respondent's records for  
21 J.R. would not be able to determine that J.R. had some positive squamous cell  
22 carcinoma in stage 2 of the Mohs surgery.

23 ***Prior Board Actions Against Respondent***

24 49. On or about June 11, 2004, the Board issued a Decree of Censure to Respondent  
25 for unprofessional conduct.

50. On or about August 20, 2003, the Board issued a non-disciplinary Advisory Letter  
to Respondent for his allowing a patient to apply her own Oxisoralen lotion.

51. On or about November 7, 2001, the Board issued a disciplinary Decree of Censure  
to Respondent for "failure to verify license credentials of employee, allowing

1       unlicensed employee to practice medicine in his office, and making false  
2       statements to the Board."

3       52.   On or about December 19, 2000, the Board issued a disciplinary Letter of  
4       Reprimand to Respondent for his "failing or refusing to maintain adequate records  
5       on a patient."

6       53.   On or about December 17, 1997, the Board issued a non-disciplinary Advisory  
7       Letter to Respondent for his "management, coding, and documentation of a skin  
8       lesion not otherwise specified, which resulted in scaring."

9       54.   On or about June 27, 1990, the Board issued a non-disciplinary Advisory Letter to  
10      Respondent for his failure to complete an "adequate history and physical  
11      examination of th[e] patient and coding for a more extensive examination and  
12      treatment than was actually provided."

#### 13                               CONCLUSIONS OF LAW

- 14       1.    The Board has jurisdiction over Respondent and the subject matter in this case.
- 15       2.    Pursuant to A.R.S. § 41-1092.07(G) (2) and A.A.C. R2-19-119(B), the Board has  
16       the burden of proof in this matter. The standard of proof is by a preponderance of  
17       the evidence. A.A.C. R2-19-119(A).
- 18       3.    The evidence of record established that Respondent violated the provisions of  
19       A.R.S. § 32-1401(27) (e) by failing to maintain adequate medical records for J.R.,  
20       as described in the above Findings of Fact.
- 21       4.    The Board failed to sustain its burden of proving that Respondent violated the  
22       provisions of A.R.S. § 32-1401(27) (q). With the exception of his records for J.R.,  
23       the weight of the credible evidence established that Respondent met the standard  
24       of care for a Mohs surgeon in his treatment of J.R.

#### 25                               ORDER

      Respondent is issued a Letter of Reprimand in this matter.

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Respondent is further notified that the filing of a motion for rehearing or review is required to preserve any rights of appeal to the Superior Court.

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1 Executed copy of the foregoing  
mailed by U.S. Mail this  
2 30 day of February, 2012 to:

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